

APPENDIX.

Copy of motion of this respondent (appellant there) in the Circuit Court of Appeals, First Circuit, March 22, 1927, in four cases appealed from the United States District Court for Porto Rico, to remand them to the District Court to dismiss for want of jurisdiction, because of the amendment of Section 48 of the Organic Act of Porto Rico by Section 7 of the Act of March 4, 1927, prohibiting suits to restrain Porto Rican taxes from being "maintained" in the Federal District Court of Porto Rico.

APPENDIX.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

October Term, 1926

"No. 2052.

GALLARDO *vs.* LA PLATA TOBACCO COMPANY.

No. 2053.

SAME *vs.* FAJARDO SUGAR COMPANY.

No. 2054.

SAME *vs.* FAJARDO SUGAR COMPANY.

No. 2058.

SAME *vs.* PORTO RICO RAILWAY, LIGHT & POWER COMPANY.

"MOTIONS, AND SUGGESTIONS IN SUPPORT OF IT"

"Now comes the said Juan G. Gallardo, defendant-appellant in the above cases, and invites the attention of this Honorable Court to the Act of Congress approved March 4, 1927, since these causes were argued and submitted in this Court, entitled:

"An Act to amend and reenact sections 3, 20, 31, 33, and 38 and 48 of the act of March 2, 1917, entitled, 'An act to provide a civil government for Porto Rico, and for other purposes,' as amended by an act approved June 7, 1924, and for the insertion of a new section in said act between sections 5 and 6 of said act, to be designated as '5a' of said act,"

section 7 whereof amends Section 48 of said Organic Act of Porto Rico, among other things, by adding thereto the following:

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico."

"And thereupon, in view of said statute, this defendant-appellant now moves the Court to remand each of these cases to the District Court of the United States for Porto Rico, with directions to dismiss each of them for want of jurisdiction.

"And in support of this motion, defendant-appellant submits the appended suggestions.

"San Juan, Porto Rico, March 14, 1927.

"GEORGE C. BUTTE,

Attorney General of Porto Rico.

"WILLIAM CATTRON RIGBY,

Lieutenant Colonel, Judge Advocate."

"J. A. LÓPEZ ACOSTA,

Of Counsel.

"SUGGESTIONS IN SUPPORT OF THE FOREGOING MOTION.

"1. The act of Congress approved March 4, 1927, amending the Organic Act of Porto Rico, amends Section 48 of the Organic Act by adding the following sentence:

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be *maintained* in the District Court of the United States for Porto Rico."

"It will be observed that *the provision is against MAINTAINING the injunction suit, which covers every step in the suit from first to last.* (It is submitted that this statute does not really change the prior law, but is simply a definite expression by Congress of its intent that Section 3224, Revised Statutes, is in effect in Porto Rico, as heretofore argued by us in these cases).

"2. Each of these cases is purely a suit for an injunction. Each has no other purpose. The injunctions were granted by the District Court, and appeals were prayed and allowed by that Court to this Court.

"3. *An appeal (differently from a writ of error) is not a new suit.* It is a part of the proceedings in the original suit.

3 Corp. Jur., "Appeal and Error," sec. 34, page 320, and cases cited.

"The appeal is allowed by order of the trial court, and a further order of that court is necessary after receiving the mandate of this Court, whatever the decision of this Court may be. In any event, the United States District Court will be required to enter some further order in each of these cases, in accordance with this Court's mandate, either vacating its former decree, if that should be reversed by this Court, or else, in case of affirmation here, putting its former decree in execution and vacating the stay attendant upon the appeal.

"4. *But the entry of any such order by the District Court would be to 'MAINTAIN' this injunction suit; which is forbidden by Section 48 of the Organic Act as now amended on March 4, 1927. Therefore, the District Court would have no jurisdiction, under that statute, to enter any order whatever in the case upon the receipt of the mandate of this Court (except to dismiss the suit for want of jurisdiction). The entry of any other order would be to 'maintain' the suit; which is now beyond the power of the District Court.*

"5. *It follows that any decision by this Court on the merits would be a decision of a merely MOOT QUESTION; and not an exercise of the judicial power of the Constitutional courts of the United States.*

"6. Accordingly, it is respectfully submitted that this motion should be granted, and each of these causes remanded to the District Court of the United States for Porto Rico, with directions to that Court to dismiss each of these suits for want of jurisdiction.

"GEORGE C. BUTTE,
Attorney General of Porto Rico.
"WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate."

"J. A. LÓPEZ ACOSTA,
Of Counsel."